

Foundation Business Software Limited Standard Terms and Conditions

1. ACCEPTANCE OF CONDITIONS

Unless Foundation Business Software Limited ("the company") expressly agrees to the contrary in writing:

1.1 These conditions shall apply to all contracts between the Company and any other person firm or company ("the Customer") for the carrying out of services, sale of software licences or supply of goods by the Company.

1.2 Any proposals shall be valid and effective only in conjunction with and incorporating these conditions.

1.3 These cannot be modified or excluded by any printed or other standard terms which the Customer may seek to incorporate whether expressly or impliedly.

1.4 Placement of an order with the Company or acceptance by the Customer of delivery of any goods or the provision of any services shall be deemed proof of the acceptance of these conditions.

2. DEFINITIONS

In these conditions (unless the context otherwise requires)

2.1 "Contract" shall mean the special conditions set out in any Proposal between the Company and the Customer for the supply of Work and these Conditions of Business.

2.2 "Company" shall mean Foundation Business Software Limited.

2.3 "Customer" shall mean the person, firm or Company contracting for the Work.

2.4 "Work" shall mean the services undertaken, software licences sold and goods supplied by the Company to the Customer from time to time, including, as appropriate, but not limited to software development, software maintenance, computer and network systems maintenance including installation and set-up services, hosting services for web sites, online applications and email, licences for software, leasing and rental of software and hardware and supply of goods, together with all ancillary services related thereto and consultancy on all appropriate matters.

2.5 "Specification" shall mean the detailed specification provided by the Customer or supplied by the Company and incorporated in any proposal (as amended by agreement between the parties from time to time).

2.6 "Proposal" shall mean any form of communication whether verbal or written, delivered by voice, on paper or in any digital format and howsoever delivered including but not limited to in person, by post or courier, or electronically by telephone, email or download from a web site or intranet, which includes a specification for work whether or not an estimated or quoted price is provided in such proposal.

3. PROPOSALS

The Company shall have the right, by notice of writing, to withdraw any proposal given by the Company at any time (up until acceptance by the Customer). Unless withdrawal is waived in writing by the Company all proposals shall be deemed to be withdrawn unless the Company receives notice of the Customer's acceptance in writing within 30 days from the date of the proposal. Acceptance in writing constitutes an order.

4. ORDERS

Orders regularly entered, verbal or written, cannot be cancelled except upon terms that will compensate the Company against any loss incurred by the Company.

5. ADDITIONAL CHARGES AND SPECIFICATION CHANGES

5.1 Proposals are based upon the current costs of production and current rates of tax or duty and are subject to amendment by the Company on or at any time after acceptance to meet any rise or fall in such costs or rate of tax or duty. Additional charges may also be made to cover any extra work involved where the Specification changes or extends in anyway.

5.2 Where during or after acceptance the Customer requires a change in Specification or the scope of Work then the Customer shall provide to the Company full written particulars of the requested modification and all such further information as the Company shall reasonably require. As soon as practicable after receiving such particulars, the Company shall inform the Customer as to whether the changes required are feasible and what alterations to any delivery or completion schedule agreed will be necessary and its estimate of the additional charges which would arise from implementing them. If the Customer elects to proceed with the modification they will confirm the agreed details of the modification and revised price in writing (or verbally).

5.3 If the Customer has been made aware of the change of specification or not or is advised that additional costs will be occurred due to the nature of the work then the Company shall be entitled to issue an additional or revised invoice for the cost of the extra work involved.

6. GOODS AND SERVICES TAX

Where applicable Goods and Services Tax, and any other duty or tax as may become payable, will be charged (whether or not included in the Proposal) and the Company reserves the right to charge Goods and Services Tax, or any other duty, on all Work.

7. COPYRIGHT ON SOFTWARE DEVELOPED

7.1 The Company retains all rights to the software ["the Work"] it develops on behalf of the Customer including but not limited to the rights to sell, distribute and modify the software in whole or in part for other uses and the Company shall be deemed to be the Copyright Owner as defined by S8 and S21 of the Copyright Act 1994 notwithstanding any provisions of the Act to the contrary.

7.2 The Company grants the Customer a non-exclusive, non-transferable licence to use the Work it develops without the right to sublicense.

7.3 The Company reserves the right to use any knowledge and right acquired in developing the Work to market and license other products derived therefrom save only that such rights shall not include the right to reproduce any materials submitted by the Customer save as provided in condition 17.

8. CUSTOMER'S PROPERTY

8.1 The Customer's property and all property supplied to the Company by or on behalf of the Customer shall be held, worked on, and carried at the Customer's sole risk and the Company shall not be liable for any loss or damage to such property howsoever caused and the Customer shall insure accordingly. If property so supplied is not readily replaceable the Customer is advised to keep duplicate copies at all times.

8.2 Where the Company has insurance covering loss or damage to Customer's supplied property the Company's liability for such property shall not exceed the amount recoverable from such insurance in relation to that property.

9. PRODUCTION AND DELIVERY SCHEDULES

9.1 Production schedules will be established by the Company and the Customer agrees that any such schedule for the completion of such Work is a best estimate only and shall not represent a commitment to deliver by such date and time.

9.2 Without prejudice to condition 9.1 above, while the Company shall make all reasonable commercial efforts to comply with any delivery schedule agreed, time shall not be of the essence in respect of any delivery.

10. TERMS AND PAYMENT

10.1 In the absence of the express written agreement of the Company to the contrary and in consideration of the Company accepting instructions from the Customer, such Customer will be liable for all sums due to the Company in respect of such order in full without any discount (except any discount allowed by this Contract), deduction, set-off or abatement on any grounds irrespective of whether or not such Customer is acting as principal or agent.

10.2 A Payment Schedule will be detailed in any Contract for Work which includes Software Development or Consultancy.

10.3 Payment with Order shall apply to any 3rd Party supplies of Software, Hardware, other Goods and specified Services that are not included in any Payment Schedule as noted in condition 10.2.

10.4 Subject to status and when agreed in writing payment for Work shall be required 20 days from end of month. 10.5 For the purpose of conditions 10.2, 10.3 and 10.4 time shall be of the essence. Payment for Work shall not be deemed to have been made until the Company is in possession of cleared funds or until the amount of payment is credited to the Company's bank account. The Company reserves the right at any point before, during or after invoicing to withdraw these or any other credit terms, and (without limitation) to require payment before commencing, continuing or delivering Work.

10.6 If payment is not made on or before the due date the Company, without prejudice to its other rights hereunder, shall be entitled to charge, in addition to any monies due hereunder, interest on the overdue outstanding amount at the rate of 5% above the Bank of New Zealand base rate from time to time in force from the date the monies first became due until the outstanding amount is paid. Interest at this rate shall continue to accrue at this rate after any judgement until the outstanding amount is paid.

10.7 In addition to 10.6 above the Company reserves the right to charge all costs of collection actually incurred.

10.8 Should completion of Work, or delivery thereof, be suspended by request of or delayed by the Customer for a period of thirty (30) days or more the Company shall be entitled to payment for the Work already carried out and materials or services specially ordered, and may terminate the Contract on giving the Customer fourteen (14) days notice in writing.

10.9 The Company reserves the right to issue invoices to the Customer for Work completed or goods or services purchased by the Company pursuant to the execution of this Contract and the Customer acknowledges that such invoices shall become due for payment on the terms herein contained.

11. TERMINATION OF CONTRACT

In the event that in the Company's opinion, the Customer's financial position becomes unsatisfactory, or if the Customer ceases to pay its debts in the ordinary course of business or cannot pay its debts as they become due or being a Company is deemed to be unable to pay its debts or has a winding up petition against it or being an individual commits an act of bankruptcy or has a bankruptcy petition filed against him or the Customer is in breach of any of its obligations arising under this Contract (or where any occur), the Company shall, without prejudice to its other remedies, have the right to terminate the Contract forthwith or not to proceed further with the Contract or any other Work for the Customer and shall be entitled to charge for Work already carried out (whether or not completed) and goods and services purchased for the Customer, such charge to be immediate debt due to the Company.

12. DELIVERY OF GOODS AND PASSING OF RISK

12.1 Unless otherwise specified, the estimated price is for a single shipment, without storage, to the customer's place of business. Delivery proposals are based on continuous and uninterrupted delivery of complete order, unless specifications distinctly state otherwise.

12.2 Without prejudice to any offer of a delivery service by the Company expedited delivery services will be provided at current rates upon Customer's request.

12.3 Delivery is deemed to be effected and risk in the Work shall pass to the Customer upon delivery, to carrier at shipping point, collection by the Customer or their elected representative or upon mailing of invoices for finished work.

13. CLAIMS AND LIABILITY FOR GOODS

13.1 Claims of defects, damages or shortages in Work must be made by the Customer in writing within a period of seven (7) days after delivery. Failure to make such claim within the stated period shall constitute irrevocable acceptance and an admission that they fully comply with terms, conditions and specifications.

13.2 The Customer's exclusive remedy for physical defect in or damage to Work shall at the Company's discretion be limited to the repair or replacement of such Work.

13.3 Other than as provided in this condition 13, the Company shall not be liable for loss or damage (including loss or damage resulting from the negligence of the Company) arising directly or indirectly in connection with this Contract, the Work, or otherwise. Without limiting the generality of the above, the Company expressly excludes liability for consequential loss of whatever nature, third party claims occasioned by delay (howsoever arising) in completing the Work, and any loss to the Customer from delay in delivery of Work (howsoever arising).

13.4 Notwithstanding the provisions of this condition 13 or anything else contained in the Contract, in no event shall the Company's liability exceed the value of the amount of charges payable to the Company by the Customer with respect to the particular Work

which is the subject of the claim provided however that nothing contained in these conditions shall have effect so as to exclude or restrict the Company's liability for death or personal injury resulting from its negligence.

14. TITLE TO GOODS

14.1 The Company retains ownership of the Work supplied to the Customer (to the extent that the ownership of has at any time been vested in the Company and such Work does not form part of goods or materials owned by the Customer or a third party) until 14.1.1 the Company has received unconditional payment in full for all the Work supplied or performed for the Customer under this or any other Contract between the Company and the Customer from time to time; or

14.1.2 property in such goods passes to a purchaser from the Customer by way of a bona fide sale at full market value.

14.2 If payment is overdue in whole or in part the Company shall be entitled, at its discretion and at any time, to transfer title in the goods to which the Company retains ownership and for that purpose the Company and persons authorised by it are irrevocably licensed to enter the Customer's premises where the Company believes the Work or part thereof to be.

14.3 Until such time as ownership in such Work passes in accordance with condition 14.1, the Customer shall at all times store and keep such Work clearly defined as being the property of the Company.

14.4 Notwithstanding the provisions of condition 14.1, the Company shall be entitled, at its discretion and at any time, to transfer title in the Work to which the Company has retained title pursuant to this condition, to the Customer and without prejudice to any other remedies the Company may have, sue for the price payable pursuant to the relevant Contract.

14.5 The Customer irrevocably licenses the Company to sell or otherwise dispose of any Work which the Company has at any time a lien and power of sale under condition 17 or in which the Company retains ownership under condition 14.

14.6 The licence granted by condition 14.5 is a licence to the full extent of any rights owned by the Customer and to the extent that rights are licensed to the Customer shall take effect as an irrevocable sub-licence thereunder.

15. SOFTWARE LICENCES

15.1 Where the contract includes sale of 3rd-party software licences; those licences shall be deemed to be a direct contract between the 3rd-party vendor and the Customer and the Company extends no warranties and accepts no liabilities whatsoever in respect of those contracts.

15.2 Notwithstanding 15.1, from time to time the Company may collect license fees on behalf of the 3rd-party vendor in accordance with the 3rd-party vendor's prevailing terms and conditions and the Customer shall pay those fees within 7 days of receipt of invoice.

16. LEASING AND RENTAL OF SOFTWARE AND EQUIPMENT

16.1 Where explicitly stated in the Contract, the Company may rent Work, Software and/or Goods to the Customer for a limited period at terms and conditions specially agreed. Title and ownership of rental Work, Software and Goods shall remain exclusively and unreservedly with the Company notwithstanding that said Work, Software and Products may be within the Customer's possession for the rental period or any other clause within these Terms and Conditions.

16.2 The rental agreement being a part of the Contract, may be terminated on 14 days notice by either party or where the Customer has failed to maintain their obligations regarding the rental agreement, by the Company or on cancellation of the Contract as noted in these terms and conditions.

16.3 The Customer accepts full responsibility and liability for damage to rented Work, Software and Goods in their possession and agrees to reimburse the Company for the full cost of repairing or replacing any such damage and the Company reserves the exclusive right to decide whether such damage be repaired or replaced.

17. LIEN

Without prejudice to the other remedies under this contract or otherwise, the Company shall, in respect of all debts due from the Customer to the Company whether under this Contract or otherwise and whether or not due for payment have a lien on all goods and property in its possession belonging to the Customer (whether worked on or not) and whether or not in the possession of the Company under this Contract and shall be entitled on the expiration of fourteen (14) day's notice to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debts.

18. INDEMNIFICATION

The Customer shall indemnify and hold harmless the Company from any and all loss, cost, expense and damages on account of any and all manner of claims, demands, actions and proceedings that may be instituted against the Company on grounds alleging that the said Work violates any copyright or that is libellous or scandalous, or invades any person's right to privacy or other personal rights, except to the extent that the Company has contributed to the matter. The Customer agrees to, at the Customer's own expense, promptly defend and continue the defence of any such claim, demand, action or proceeding that may be brought against the Company, provided that the Company shall promptly notify the Customer with respect thereto, and provided further that the Company shall give to the Customer such reasonable time as the exigencies of the situation may permit in which to undertake and continue the defence thereof.

19. SUBCONTRACTING

The Company reserves the right to subcontract all or any part of the Work at its sole discretion provided that the Company shall remain responsible for ensuring the due performance by the subcontractor of such part of the Work and shall be liable to the extent set out in condition 13 for any loss caused by failure to do so.

20. FORCE MAJEURE

20.1 Every effort is made by the Company to carry out the Contract but its due performance is subject to postponement or cancellation by the Company as it may find necessary as a result of inability to secure labour, goods or services or as a result of an act of God, war, strike, lockout or other industrial dispute (including by the Company's own employees), fire, flood, drought,

legislation or other cause (whether of the foregoing class or not) beyond the Company's control. Any such postponement or cancellation shall be without liability to the Customer or third party.

20.2 If the Contract is postponed, the Company's duty to perform shall be suspended for as long as the circumstances set out in condition 20.1 continue, and the time for performance of the Company's obligations shall be extended by a period equal to the duration of those circumstances.

20.3 If the Contract is cancelled as a result of any circumstances set out in condition 20.1, the Customer shall pay the Company for Work done and expenditure incurred by the Company before the event of force majeure in question.

21. CONSTRUCTION OF CONTRACT

The Contract shall not be modified without the written agreement of a director of the Company and these conditions shall govern the construction of the Contract, notwithstanding any inconsistencies which may arise as between these conditions and any other terms and conditions that the Customer may seek to impose. These conditions and all other express terms of Contract shall constitute the entire understanding between the Company and the Customer and no representations, conditions or warranties express or implied statutory or otherwise made by or on behalf of the Company or the Customer to the other party, in connection with or arising out of the Work and which are not contained in these conditions or such other express terms of the Contract shall give rise to any liability (including liability of the Company, its servants or agents in negligence) on the part of the matter thereof. The terms of this Contract are severable.

22. LAW

These conditions and all other express terms of Contract shall be governed and construed in accordance with New Zealand law and the jurisdiction of the New Zealand Courts.